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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-309

TRACY SIDLE,

Petitioner,

vs.

WILLIAM C. MAJORS,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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THE QUESTION PRESENTED.

The question presented for review is whether the Guest Statute enacted by the Indiana General Assembly, Ind. Code 1971, 9-3-3-1 (Burns Code Ed.), is in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE.

This is a diversity action initiated by petitioner Tracy Sidle against respondent William C. Majors seeking recovery for personal injuries sustained by Sidle in an automobile collision allegedly caused by Major's negligence. The operative facts, as found by the United States District Court for the Southern District of Indiana are:

On November 18, 1972, petitioner Sidle and respondent Majors were attending the Homecoming activities of Vincennes University, and were staying at the Executive Inn in Vincennes, Knox County, Indiana. Sometime prior to 11:00 P. M. on that date petitioner, respondent, and a mutual friend decided to visit another friend who lived near Hart Street Road on the south side of Vincennes.

Upon departing the Executive Inn, petitioner accepted respondent's invitation to ride in his automobile. Neither prior to nor during the automobile trip did the petitioner pay or promise to pay respondent any consideration for the transportation.

The automobile in which the trip took place was a 1972 Opal GT owned and driven by respondent. Leaving the Executive Inn, respondent drove south and turned onto Hart Street Road and proceeded in a southerly direction. As respondent drove along Hart Street Road he approached a sharp left curve, and while he was attempting to negotiate the curve, the vehicle left the traveled portion of the road and struck a tree.

As a proximate result of the accident, petitioner sustained injuries and incurred medical expense.

REASONS FOR DENYING THE WRIT

Respondent submits that at least four (4) separate reasons exist for denying petitioner's writ:

I. Petitioner has not brought herself within this Court's jurisdiction on a writ of certiorari;

II. This Court's dismissal of the appeal in *Cannon* v. *Oviatt*, ... Utah ....., 520 P.2d 883 (1974), appeal dismissed for want of substantial federal question, 419 U.S. 810, 95 S.Ct. 24 (1974), reh. denied. 95 S.Ct. 645 (1974), is a ruling on the merits of the exact question attempted to be raised herein;

III. This Court's opinion in *Silver* v. *Silver*, 280 U.S. 117 50 S.Ct. 57 (1929), is dispositive of the sole issue sought to be presented by petitioner; and

IV. The Indiana Supreme Court in *Sidle* v. *Majors*, ... Ind. ....., 341 N.E.2d 763 (1976), the United States District Court for the Southern District of Indiana, and the United States Court of Appeals for the Seventh Circuit, properly held that the Indiana Guest Statute does *not* violate the equal protection guarantees of the Fourteenth Amendment to the Constitution of the United States.

Rule 19 of the Rules of the Supreme Court of the United States sets forth the considerations governing jurisdiction of a review of certiorari. The rule, in pertinent part, provides:

> "Rule 19. Considerations Governing Review on Certiorari.
>
> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> "(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.
>
> "(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual court of judicial proceedings, or so far sanctioned such a departure by

a lower court, as to call for an exercise of this court's power of supervision."

In the case at bar, petitioner seeks review of a decision which does not fall within any of the above enumerated categories. It is not a decision in direct conflict with another court of appeals on the same matter. It is not a decision resolving an important state question in a way in conflict with applicable state law. It is not a decision on an important question of federal law which has not been decided by this Court. It is not a decision resolving a federal question in a way in conflict with applicable decisions of this Court. This case does not involve a departure from the accepted and usual course of judicial proceedings, or sanction such a departure by a lower court.

This case involves a decision by the Seventh Circuit Court of Appeals upholding the constitutionality of the Indiana Guest Statute. It is in accord with applicable state law, *Sidle* v. *Majors*, ... Ind. ....., 341 N.E.2d 763 (1976), and with the controlling decision of this Court, *Silver* v. *Silver, supra.* Moreover, as this Court recently declared, the question presented is not a substantial federal question. *Cannon* v. *Oviatt, supra.* The writ should therefore be denied for petitioner's failure to satisfy the criteria of Rule 19, *supra.*

II.

In *Cannon* v. *Oviatt*, ... Utah ....., 520 P.2d 883 (1974), the Supreme Court of the State of Utah upheld Utah's Guest Statute, 41-9-1, U.C.A. 1953, against an equal protection attack for many of the same reasons advanced by petitioner. The appeal from the ruling in *Cannon* v. *Oviatt*, to this Honorable Court was dismissed for want of a substantial federal question. 419 U.S. 810, 955 S.Ct. 24 (1974). Although that ruling may not be a plenary consideration, it is an adjudication on the merits of the exact question presented herein. See *Hicks* v. *Miranda*, 422 U.S. 322, 95 S.Ct. 2281 (1975). This is particularly true since the Utah guest statute was recognized by the Seventh Circuit Court of Appeals as being "virtually identical to Indiana's."

Petitioner's contention that the Indiana Guest Statute violates the Equal Protection Clause of the Constitution fails to present a substantial federal question.

In petitioner's brief solicitious concern is expressed about the split of authority in the various states concerning the constitutionality *vel non* of their respective guest statutes. Moreover, petitioner is concerned that as one travels across the continental United States the liability of hosts toward guests vacillates from state to state. Apparently, petitioner is advancing the proposition that the equal protection guarantees of the Fourteenth Amendment require uniformity among the laws of the various states. The contention is without merit. The equal protection clause requires that a state not deny to any person within its jurisdiction the equal protection of the laws. This does not mean that the laws of Indiana must correspond to those of Illinois, Ohio, Kentucky, or any other state. It is not an unconstitutional deprivation of equal protection for Indiana's guest statute to afford different treatment than the laws of another state, just as it is not unconstitutional for the laws of Indiana to differ from other states in such areas as medical malpractice, statutes of limitations, age of majority, pari-mutuel betting, speed limits, or a host of other subjects.

III.

In *Silver* v. *Silver*, 280 U.S. 117, 50 S.Ct. 57 (1929), this Court unanimously rejected an argument that the guest statute of Connecticut violated the equal protection guarantees of the Fourteenth Amendment. Respondent respectfully submits that this ruling is dispositive of petitioner's writ.

It is a fundamental precept of constitutional law that legislation is clothed with a presumption of constitutionality. *McDonald, et al* v. *Board of Election Commissioners of Chicago,*

394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969). When confronted with an equal protection argument, this Court has historically employed a two-tier approach in evaluating and reviewing the cases.

> *Frontiero* v. *Richardson*, 411 U.S. 677, 93 S.Ct. 1764, 36 L.Ed.2d 768 (1972).

The "low" tier or low scrutiny test presumes constitutionality of the classification and will not disturb the state action unless the classification bears no rational relationship to a legitimate governmental purpose. The classification can withstand equal protection scrutiny even though there be significant deviation from an ideal classification.

> *Frontiero* v. *Richardson, supra.*
>
> *Dandridge* v. *Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970).
>
> *McGowan* v. *Maryland*, 366 U.S. 420, 81 S.Ct. 1701, 6 L.Ed.2d 393 (1961).

At the opposite end of the scale of judicial review is the second tier, or high scrutiny test. If the classifying criteria are grounded upon certain suspect traits, such as race,[1] alienage,[2] or national origin[3] or if the classification intrudes upon the so-called fundamental rights such as to the right to vote,[4] to appeal criminal convictions,[5] or freedom of association,[6] then the classifications will not stand unless justified by a compelling state interest.

1. *See, Loving* v. *Virginia*, 388 U.S 1, 87 S.Ct. 1817, 18 L.Ed. 2d 1010 (1967).
2. *See, Graham* v. *Richardson*, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971).
3. *See, Oyama* v. *California*, 332 U. S. 633, 68 S. Ct. 269, 92 L.Ed. 249 (1948).
4. *Dunn* v. *Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).
5. *See, Griffin* v. *Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 591 (1956).
6. *See, Griswold* v. *Connecticut*, 381 U.S. 479, 85 S.Ct. 1678 14 L.Ed.2d 510 (1964).

> *Frontiero* v. *Richardson, supra.*

As recognized by the Court of Appeals in the case at bar, since the Indiana Guest Statute is not inherently suspect and does not impinge fundamental rights, the low scrutiny test is applicable.

Thus, the statute is not unconstitutional if its classifications are rationally related to some legitimate state purpose.

IV.

This test was employed by the Indiana Supreme Court in *Sidle* v. *Majors*, ... Ind. ....., 341 N.E.2d 763 (1976), wherein the Court found both a legitimate legislative purpose and a rational relationship between the classifications made by the statute and the legislative purpose. Moreover, this court's ruling in *Cannon* v. *Oviatt, supra.* upholds a finding by the Utah Supreme Court of both a legitimate state purpose and a rational relationship in a virtually identical statute.

Sidle has not sustained her burden of rebutting the presumption of constitutionality of the statute. Her brief is replete with her social theories which are based on nothing more than her own conjecture and the supposition of some legal scholars. The question of the efficiency, fairness and wisdom of the statute is for legislative resolution. The function of the judiciary is to consider whether the legislature has the power to enact particular legislation, not whether the public policy decision behind the legislation was proper or wise. Justice LeGrand in *Keasling* v. *Thompson*, ... Iowa ....., 217 N.W.2d 687 (1974), reaches the heart of the decisions relied upon by Sidle when he states:

> "What has happened is that judicial forebearance has run out in the face of disapproval of the law itself. This hardly serves as a legitimate reason for the overthrow of the statute. Courts should pay the same deference to statutes

they don't like as to those they do." (217 N.W.2d at p. 696.)

CONCLUSION

Petitioner has failed to bring herself within the jurisdictional mandates of Rule 19 of the Rules of the Supreme Court of the United States. Moreover, the only question sought to be presented by petition was dismissed by this Court in 1974 for want of a substantial federal question. Additionally, this Court's opinion in *Silver* v. *Silver, supra,* is a plenary consideration and dispositive of petitioner's argument.

For these reasons, respondent respectfully submits that petitioner's writ should be denied.

Respectfully submitted,

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